

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1461 of 1999

in

SPECIAL CIVIL APPLICATION No 6459 of 1995

with

LETTERS PATENT APPEALS

NOS. 1462 AND 1464 OF 1999

WITH

civil applications nos. 12724, 12723 and 12722 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

TOWN DEVELOPMENT OFFICER

Versus

MANGUBEN DHULAJITHAKORE

Appearance:

MR PRASHANT G DESAI for Appellant

MR A.J.PATEL FOR THE RESPONDENTS IN ALL APPEALS

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 01/11/1999

ORAL JUDGEMENT

Per Thakker, Act.C.J:

We have heard Mr P.G.Desai, learned GP for the appellant and Mr. A.J.Patel, learned counsel for the respondents.

All these appeals arise out of common judgment and order passed by the learned Single Judge in Special Civil Applications Nos. 6458, 6459 and 6460 of 1995 decided on September 27, 1999.

After considering the facts and circumstances of the case, the learned Single Judge has held that the condition sought to be imposed by the appellant on the respondents-original petitioners was not called for, by recording reasons. In paras 9, 10, 11 and 12 of the judgment, the learned Single Judge observed:

"9. Having heard the learned counsel for the respondents it is clear that final plot Nos.41,42,62 and 63 of town planning scheme No. 20 were carved out from corresponding old survey Nos. 49,49/2. 56/1 and 56/2. The petitioners are not claiming any interest towards final plot No.42. They are concerned with final plot Nos. 41, 62 and 63. They wanted to develop these plots and raise construction for which they applied for sanction to the respondent No.1. The said sanction was refused for the reasons stated in annexure D. As many as 12 objections were raised and on these 12 grounds, the permission sought for by the petitioners was refused and the plans were not sanctioned. In course of argument, Shri A.J.Patel, learned counsel for the petitioners contended that he is aggrieved from objection No.4 which is one of the reasons for refusing to sanction the plan. He contended that the petitioners are ready to remove other objections, namely., objection Nos. 1,2,3 and 5 to 12. He was also agreeable to remove objection No.10 and argued that fresh copies of plan can be submitted by the petitioners. His only grievance is regarding objection No.4 which is one of the main grounds for refusing to sanction the plan. Annexure D in the first paragraph recites that the application of the petitioners was rejected for the reasons contained therein.

Reason No.4 is that in town planning scheme No.20, revenue survey No.49/2 of village Changispur is allotted to original plot No.1; and in lieu of final plot C, final plot Nos.41, 62 and 63 are decided to be given by the planning officer; and the land of final plot No.42 is reserved for a school and this T.P.scheme was approved by the Government on 27.5.1966 which came to be approved by the Government on 27.5.1966 which came into force with effect from 1.7.1966. In spite of these facts, since the proceeding of regular civil suit No. 4395 of 1992 are pending in respect of original plot and final plot No.,42, and since the matter is subjudice, permission in respect of final plot Nos. 41, 62 and 63 of this area cannot be granted. This objection on the face of it is not sustainable., The reason is that the petitioners are not claiming any interest or title over plot No.42. The civil suit in respect of plot No.42 has been filed against the respondent No.1 by one Bapuji Dhulaji Thakore vide civil suit No.4395 of 1992 in the City Civil Court, Ahmedabad. In that suit, the corporation respondent No. 1 is claiming title over plot No.42 whereas, the plaintiff of that suit is claiming to be the owner of the plot. The said plaintiff is not claiming ownership in final plots Nos. 41, 62 and 63. Normally, pendency of civil suit in respect of final plot No.42 cannot be a ground for refusing to sanction the plan. Of course, if other objections are removed and fresh plans are submitted by the petitioners, the respondent No.1 is duty bound under the statute to consider the said plans and sanction it in accordance with rules within the stipulated period prescribed under the statute. Shri P.G.Desai, learned G.P. stated that in case, fresh plans are submitted and other objections except objection No.4 are removed, the said plans will be examined in accordance with rules and bye-laws and necessary orders will be passed by the respondent No.1. In this view of the matter, there remains little controversy why fresh plans submitted by the petitioners after removal of objections contained in Annexure D should not be considered and sanctioned by the respondent No.1 in accordance with law. The objection of ground No.,4 in Annexure D is certainly irrelevant and the petitioners cannot be made to wait indefinitely or for a long period till the aforesaid civil

suit is finally decided upto the second appeal which has not been decided so far even by the trial court though seven years have passed. Moreover, the petitioners are not plaintiffs in the aforesaid civil suit nor they are claiming any right, title or interest over plot No.42. Consequently, there is no reason why their fresh plans to be submitted after removal of remaining objections should not be considered and passed in accordance with rules and bye laws.

10. It was argued by Shri Desai that the result of decision in respect of final plot No.42 will have material bearing in sanctioning the plans inasmuch as the occupants of that plot have to be accommodated elsewhere in case it is held by the competent court that final plot No.42 is vested in the Corporation. However, this cannot be a ground for compelling the petitioners to wait till the aforesaid suit is finally decided. The learned counsel for the petitioners on the other hand contended that there are no occupants over plot No.42. However, it is not necessary to decide in this writ petition whether there are occupants over plot No.42 or not.

11. It is also pointed out that no plan has been filed with the respondent No.1 by Bapuji Dhulaji Thakore. Consequently, the respondent No.,1 cannot be blamed for withholding sanction of any plan of Bapuji Dhulaji Thakor. As and when the plan is filed by Bapuji Dhulaji, it may be considered by the respondent No.1 in accordance with law and rules of course, keeping in view the pendency civil suit No. 4395 of 1992.

12. In view of the above discussion, the objection No. which is one of the main grounds for rejecting the petitioners' plan for sanction is uncalled for and patently illegal. This ground or objection has, therefore,, to be quashed. The objections cannot be disturbed nor these objections can be quashed."

In our opinion, by allowing the petitions, the learned Single Judge has not committed any error of law which requires interference by us.

Our attention was, however, invited by the learned counsel for the appellant that one more petition filed by the petitioners was pending being Special Civil Application No. 7199 of 1996 . Attention of the learned Single Judge was also invited to that fact and a prayer was made that present petitions may be heard along with the said petition. Learned Single Judge, however, disposed of the present three petition. An order to be passed in that petition will have to be taken into account while disposing the present petitions as also LPAs.

In the light of the above facts, it is clarified that the order passed by the learned Single Judge may have to be implemented by the appellants by considering the plans to be submitted by the petitioners. It would, however, be subject to pendency of Special Civil Application No. 7199 of 1996 referred to above and subject to final order to be passed by appropriate court in that petition.

With the above observations, LPAs stand disposed of. No costs. No order on civil applications.

(C.K.Thakker, Actg. C.J.)

(K.M.Mehta,J.)

parekh